

REMARKS

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims and the following remarks.

Amendments to the Specification

The specification has been amended to correct minor typographical errors. No new matter has been added by way of the amendments to the specification.

Status of the Claims

In the present Amendment, claims 6 and 10 have been amended. Also, claims 5, 9 and 16 are withdrawn as being directed to non-elected subject matter. Claims 3, 4, 7 and 11-14 are objected to but are indicated as having allowable subject matter. Clarification of the status of claim 8 is requested (compare the PTOL-326 form versus paragraph 4 of the Office Action). Also, claims 7 and 14 have been canceled without prejudice or disclaimer of the subject matter contained therein. Thus, claims 1-6, 8-13 and 15-16 are pending in the present application.

No new matter has been added by way of these amendments. Claim 6 now incorporates the allowable subject matter of claim 7, and claim 10 now incorporates the allowable subject matter of claim 14. As such, Applicants respectfully request the Examiner to indicate that claims 6 and 10, and all dependent claims thereon, are now in allowable condition.

Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner

withdraw all rejections and allow the currently pending claims.

Withdrawn Subject Matter

Applicants respectfully note that should the Examiner find the elected product claims as allowable, then the process claims of making such products should be rejoined and found allowable in accordance of *In re Ochiai*. 37 USPQ2d 1127 (Fed. Cir. 1995). Further, the presently pending method claims depend on the product claims.

Issues under 35 U.S.C. § 102(a)

Claims 1, 2, 6, 8, 10 and 15 stand rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. 2003/0144643 A1 (hereinafter referred to as “Jarpenberg ‘643”) (see paragraphs of the Office Action). Applicants respectfully traverse and reconsideration is based on the following remarks.

First, regarding claims 6, 8, 10 and 15, Applicants note that allowable subject matter now appear in these claims. Thus, the rejection of these claims has been overcome.

In the Office Action, the Examiner refers Applicants to paragraphs [0012] and [0047] and Figure 4 of Jarpenberg ‘643. Still, regarding the rejection of claims 1 and 2, the cited Jarpenberg ‘643 reference fails to disclose or suggest the instantly claimed feature of “the elastic members being arranged in the extensible portion avoiding the joints between the sheet materials and having both ends thereof fixed to the sheet materials” (see instantly pending claim 1). Instead, the elastic member of Jarpenberg ‘643 is a multi-strand elastic yard, and one multi-strand elastic yarn is made up of a plurality of strands. Jarpenberg ‘643 discloses that a multi-strand elastic

yarn is subjected to a pressure when it is joined with a sheet, some of the strands of the yarn delaminates and creates gaps through the yarn, and the sheet can be made to pass through the strands of one multi-strand elastic yarn (ee paragraph [0018] of Jarpenberg '643).

In contrast, a joint is arranged within the elastic members in the present invention. That is, a joint is arranged between two different elastic members. This structure is different from the structure of Jarpenberg '643 wherein a joint is arranged within one elastic member (multi-strand elastic yarn). Further, in Jarpenberg '643, the joints overlap with the portion wherein the multi-strand elastic yarn is arranged.

Accordingly, Applicants respectfully note that anticipation requires that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949 (Fed. Cir. 1990) (citing *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). Here, because of the lack of disclosure of all features as instantly claimed, the rejection of claims 1 and 2 in view of Jarpenberg '643 is overcome. Reconsideration and withdrawal of this rejection are respectfully requested.

Conclusion

A full and complete response has been made to all issues as cited in the Office Action. Thus, Applicants respectfully request that a timely Notice of Allowance issue for the present case.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez (Reg. No. 48,501)

Application No. 10/569,204

Docket No.: 0445-0363PUS1

Art Unit 1794

Reply to Office Action of July 28, 2008

at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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